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DAY OF GENERAL DISCUSSION

Right to education (articles 13 and 14 of the Covenant)

Monday, 30 November 1998

Considerations on indicators of the right to education

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I. PRINCIPLES

1. As a result of the growing interest in the practical implementation of human rights, emphasis has been placed on the various aspects of the right to education, to which attention is frequently drawn in international documents. The practical actions which contribute to the realization of this right, which is legally recognized at the international level, are thus being carefully considered and their meaning and significance assessed.

2. Education is increasingly being confirmed as a key factor in the harmonious political, economic, social and cultural development of human beings and societies. It is increasingly being recognized as an essential and basic requirement for pushing back poverty, exclusion and lack of understanding, for promoting the ideals of democracy, peace and social justice and for halting oppression and war.

3. Education has also been called into question and reforms have been adopted as a result of rapid economic, scientific and technological developments. Education is increasingly being regarded as an institution for social change and political, scientific and economic renewal. Trying to change education means reconsidering its objectives and taking account of new philosophical approaches and changes in values, as well as each country's particular context and traditions. It also means establishing a new type of relationship between school and society, a new kind of partnership, in order to help create a social environment that is more conducive to the exercise of democracy, freedom and individual responsibilities. The type of education chosen reflects the choices a society has made.

4. There are many international documents which deal with this problem, starting with the Universal Declaration of Human Rights and the two related Covenants (see A. Fernández and S. Jenkner, "International Declarations and Conventions on the Right to Education and Freedom of Education").

5. In order to exercise the right to education fully, it is becoming more and more important to evaluate the realization of this right objectively and to review and improve the indicators that should make it possible to increase its effectiveness. In view of the nature of education and the complexity of the factors involved, however, this is not an easy task. It is relatively easier, for example, to identify the level of investment, public expenditure per student, unit costs for the State, parents and schools, the number of persons attending school, the percentage of illiterates, drop-out and graduation rates, the student-teacher ratio, the age and qualifications of the teaching staff, the costs of direct educational services and support services, trends and projections of numbers of teachers, etc. In many cases, statistical parameters help to narrow down the elements to be considered and to take account of the broader problems of schools, social life and development, which have to be interpreted in the light of data taken from a number of sectors (see, for example, studies on inequality of opportunity according to social origin, etc.). The prerequisite for all these studies is, of course, the existence of reliable statistics. A good example of the use of quantitative factors to describe the various aspects of education is to be

found in the studies of educational situations contained in publications by the Organization for Economic Cooperation and Development (see, for example, "OECD Indicators", OECD, Paris, 1997).

6. In addition to quantifiable, measurable and material indicators, a number of non-quantifiable factors and indicators with subjective aspects have to be considered in order to assess the implementation of the right to development. This might, moreover, involve risks of an interpretation that is much too incomplete and partial. Such judgements may easily vary according to country and region. If this approach is not counterbalanced by a concern for broad-based consultation and references to generally recognized values, it may, if taken too far, lead to exacerbated ethnocentricity, nationalism, violence, attitudes contrary to traditional humanism or a definite influence "party politics". The aim would be above all to indicate as objectively as possible which values shared by every democratic culture are imparted by education, what types of behaviour are agreed on and how the human being is to develop fully in all his richness and in all the complexity of his expressions, his commitments, his aesthetic sense, his spirituality, etc.

7. In view of the progress made in all areas of human development, the increase in growth and the wide variety of factors which are involved, as well as their interconnection, interdependence and interference, it is essential to narrow the studies down and go beyond exclusively quantitative justifications.

8. Because of the globalization of problems and their scope, interrelationship, seriousness and urgency, moreover, the world around us can be interpreted only in global terms. Complex reality cannot be approached only in terms of its components taken separately and analysed only by means of traditional methodological tools. It is a mixture of order and disorder and of the rational and the irrational. It requires global responses, a set of objective measures and subjective approaches based on imagination, creativity, intuition and sensitivity, as well as on widely accepted humanist and ethical concepts. Reality, which is characterized by rapid and ongoing change, and the future, which is uncertain, call for complex and rapid responses, as well as action at the international level. For example, environmental pollution, the depletion of natural resources, population growth and the poverty in which much of the world lives can no longer be seen only from one single country's point of view.

9. In the circumstances, the hopes pinned on education increase rapidly, and so does the number of educational reforms. There is, however, a tendency to overestimate the role of education and to demand that it should provide solutions to the world's problems, to relations between individuals and societies, to democratic development and to social justice.

10. No matter what the political, economic and financial factors involved, educational policies are called on to play an irreplaceable role in preparations for the future and in the transition to the new century. They and the changes they bring about in education are regarded as "an ongoing process of the enrichment of knowledge and know-how, but also and above all as an opportunity for the improvement of human beings and relations among

individuals, groups and nations" (report of the UNESCO International Commission on Education for the Twenty-First Century (Delors Commission), p. 10*).

11. To be effective, education policies have to give a clear idea of the long-term objectives to be achieved which is, in the immediate term, based on the aims of education and the available resources. They also require a systemic approach and the harmonization and integration of the various sources of education available in school and outside. They guarantee the link with sustainable development, provide the means of ensuring that human rights are made known and respected and guarantee the wise use of all of society's educational resources. It is to be hoped that educational planning and management will meet the requirements of society and the economy and contribute to the maintenance and renewal of the labour force in order to make educational strategies operational.

12. The discussion thus focuses on the future development of education from the point of view of scientific achievements and the identification of the factors likely to evaluate and influence such development. Continuing efforts are being made to analyse indicators of progress in achieving the educational ideal.

13. Since it is impossible to define all of the requirements that education is expected to meet, there is a growing tendency to try to define minimum quantities and qualities and the minimum content of concepts resulting from a consensus reached by the international community (see, for example, the documents adopted by the United Nations, governmental and non-governmental international organizations, etc.) and by national communities. These efforts are also designed to identify scientific tools for the measurement of results in relation to shared objectives determined by democratic practices.

II. SUCCESS IN EDUCATION FOR SUCCESS IN THE FUTURE

14. Education is supposed to awaken the curiosity of children, make them more observant, introduce them to basic categories of logic, encourage them to be intellectually rigorous, teach them to analyse the logical and grammatical structures of language and audiovisual messages and, above all, enable them to control their own destinies and take part freely in the development of society by becoming aware of how it is changing. It is thus supposed to transmit the know-how and abilities necessary to build the Delors Commission's four pillars of education: learning to know, learning to do, learning to live together and to live with others and learning to be. In addition to the usual measuring tools, which have already been well developed by a wealth of scientific research, the aim is to develop the ability to measure and evaluate today's basic skills, which are the foundation for the full and complete development of the human personality, individual skills and talents and intellectual, moral and aesthetic qualities. It is important to develop and, consequently, to be able to evaluate positive attitudes to issues such as mutual understanding, tolerance and democratic pluralism.

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* Learning: The Treasure Within, UNESCO, Paris, 1996.

15. In the world of information and communication, it has become essential to be able to find specific data required for the achievement of a particular objective and to select, compare, analyse and rank such data. Priority thus goes more to abilities and types of behaviour than to the storage of encyclopaedic knowledge to be evaluated.

16. Rapid social change introduces an element of uncertainty about the common fate of mankind and the development to be shared by all inhabitants of the planet. One new type of behaviour will be to learn to overcome the feeling of uncertainty. Education will have to teach us to live with this idea, to deal with and handle the unexpected and to be able to adapt flexibly to new situations. It is becoming increasingly important to develop a sense of solidarity and the ability to settle conflicts, and social and moral crises; and to accept diversity and make it a positive factor for mutual enrichment and understanding. It goes without saying that understanding of the world and of others makes it possible to understand oneself better.

III. RIGHT TO EDUCATION, DEVELOPMENT AND INDICATORS OF INTERDEPENDENCE

17. Questions about education relate basically to what it is and where it is going. The new issue of human development has to define its objectives and there has to be an in-depth analysis of the many relationships and the interdependence between education and other manifestations of the changes now taking place in the world. It may be asked whether we really should refer to ongoing education and the duty to study throughout one's life and to what extent a good education based on the humanist ideals of our time is a utopia for which no justification exists. In fact, it is internationally agreed that the primary role of education is to enable mankind to decide its own fate and its development and to contribute to the progress of the societies in which the members take part in a responsible manner.

18. Education must therefore be regarded and judged as part of a complex set of interdependent and interrelated problems. The measurement and evaluation of interdependence and interrelationships requires new approaches and new instruments. As far as development is concerned, education is just one of many means, but it becomes one of the constituent elements and one of the basic objectives (Delors report, p.84). The purpose of education should therefore be to open the doors of the future to harmonious development built on sound moral foundations, with mankind as its focus.

IV. EDUCATION AND THE ECONOMY

19. The relationship between education and the economy has always attracted the attention of researchers and decision makers, particularly in times of crisis and structural adjustment. This relationship has never been restricted to the funding of education and a study of the available financial resources. The indicators have become more precise and reflect the level of resources invested in education: unit costs per student, per school, per level of instruction and in relation to gross domestic product, the geographical distribution of resources, the quantification of relations between students and teachers, etc.

20. However, it must be borne in mind that:

(a) Although philosophical theories at the beginning of the century tried to focus attention on the immediate effect of education on economic development and the rapid integration of pupils in the production process in order to obtain a direct effect and an economic return from education, the trend nowadays is to go beyond the purely utilitarian "economist's" approach to education, which considers only the many effects of economic factors on educational objectives. Education is no longer intended for human beings only as agents of production and development, but as the object and purpose of development. The importance of investments therefore has to be assessed in terms of the overall development of human capital.

(b) Demand for education for economic purposes means analysing the role of investments in the training of the workforce. However, it is still very important to evaluate their consequences for the training of human capital and its full development, as well as for the training of economic agents capable of using new technologies that involve an element of innovation and new skills, including moral and ethical ones, as opposed to robotization and the reproduction of mechanical acts.

(c) The economic evaluation should therefore focus on the educational factors which ensure economic growth, but also guarantee better quality and more flexible manpower. It would also be useful to evaluate the relationship between the quality of education and time spent in school (duration) by comparison with the level of return on investments in the various components of the educational process.

21. There is very little research or analysis on the level of investment in the quality of education compared with studies of the "quantity" of education. Moreover, few studies analyse the economic efficiency of resources invested in new technologies in schools or in educational aims and methods. Very little research has been done on the economic criteria for, or the economic results expected from, educational reforms, decisions on the direction of education or the alternatives that are technically possible.

22. The same applies to economic bench marks that would make it possible to define the size and type of investment that is likely to give the best results, the level of return on vocational training or the economic efficiency of different syllabuses (inter alia).

23. The misconception that ongoing education is merely a process of helping labour to adjust to new working conditions is disappearing.

24. There are practically no studies on the changing nature of work, its "dematerialization", its effect on education or its economic characteristics.

25. There is still a lack of economic studies analysing the economic cost of educational reforms geared to social justice and wider access to education and knowledge. It is not possible to see education as an agent of free, genuinely equitable development without assessing what resources need to be mobilized in order to ensure development of that kind in the future.

26. The economic cost of corrective measures to ensure equality of access to education (grants, vouchers, loans, etc.) is worth more detailed analysis, as is the cost in terms of social services.

27. The economic return on educational management reforms has not yet been measured with the necessary scientific rigour. We have no objective economic criteria for evaluating, for example, the cost of the various options used in managing secondary education or the investments that would make it possible to deal with the instability of employment opportunities and the unregulated dynamics of the market.

28. In addition, insufficient progress has been made with studies of the economic criteria for educational funding and economic burden-sharing, and their social implications (e.g., what share would be borne by central financing, decentralized financing, private financing, etc.).

V. EDUCATION AND SOCIAL DEVELOPMENT

29. It is now self-evident that educational choices are social choices and the exclusive preserve of society itself. It is therefore essential to create the conditions needed to guarantee those choices and open up a genuine democratic debate on the nature and aims of education and the resources that society can make available to education.

30. A large number of studies describe the crises in society and morality as consequences of social policy and public opinion as reflected in the educational system. That could also explain why student movements are to be found in so many countries. However, recent criticisms of educational systems must be seen as part of a particularly difficult historical, economic and sociological context. They cannot be assigned to a purely educational context. Thus, the problems are necessarily linked with past educational practice and a specific social context and it is therefore important to know what historical, economic, social and political factors influence education, in order to make a more objective evaluation of the crisis in education and look for appropriate solutions.

31. It is therefore necessary to look at social differences within educational systems and find means of reinforcing social justice and equity in education and enhancing the various expressions of the right to education. Indicators such as participation rates at the various levels and in the various forms of education, educational achievement, public expenditure per student, inequality of access, access to higher education and further studies and the persistence of practices that discriminate against groups or segments of the population eligible for education then take on a particular importance for social development, one that far exceeds their quantitative significance.

32. Clearly, education can become, on the one hand, a major force for social cohesion and equalization and for long-term preparation for a common future and, on the other, an expression of problems such as polarization within a country or between industrially developed countries and developing countries. In addition, it may represent the de facto realization of various freedoms (e.g. constitutional freedoms, academic freedoms, the autonomy of educational institutions), but may also have a positive contribution to make in overcoming

exclusion, poverty, marginalization and, in some countries, ethnic, linguistic, religious and tribal barriers, inter alia, between groups.

33. Similarly, education can be usefully applied in solving urgent social problems such as violence and unemployment, in restricting privileges associated with nationality or race, and in helping to replace antagonism and confrontation by dialogue and an exchange of views in order to bring about national consensus, non-violent solutions and strengthening of democratic values, etc. It is therefore essential to be in a position to define the precise role of education in this area as well, though the use of suitable indicators.

34. The democratization of education is primarily a function of its breadth of coverage, its availability to all, the existence of human rights and whether and how far they are respected, the development of democratic citizenship and the reinforcement of democratic values. Other criteria are the progressive introduction of free education and the extent to which it benefits from a range of social services or positive discrimination arrangements. However, the democratization of education cannot be defined by a single formula or set of formulas that is expected to provide a miracle solution or to be a panacea in all situations and contexts.

35. Assessing the full importance for social development of gender equality at school requires more than statistics and quantitative data: it would naturally require - without going into detail - an analysis, using appropriate methods, of how women's education contributes to health, food and nutrition, child-rearing, etc.

36. The democratization of society and of the school throw into relief the role of diversification and the much-needed increase in the number of partners in the educational process, as well as the need to evaluate their new roles and potential level of participation. The first area to look at and evaluate would be teachers' and parents' new roles.

37. The democratic participation of all those involved in making decisions and in implementing and evaluating those decisions, whether individuals or communities, local authorities, extended school services, non-governmental organizations, teachers and students - in short, the whole range of partners - ensures the success of the educational strategies used in all educational reforms.

38. In a context of democratic participation, the State assumes new functions in the sphere of education which must be carefully analysed and brought to public notice. Examples would be the State's response to the need for uniform regulation of the education system as a whole and its role as a social mediator in establishing new requirements for education, adopting minimum educational standards, harmonizing educational action, etc. The State has an essential part to play in guaranteeing the right to education for minorities and for indigenous peoples and in safeguarding linguistic freedoms (for more detail, see the publications of the International Organization for

the Development of Freedom of Education (OIDEL) and Paul Hunt's study entitled "State obligations, benchmarks and the right to education" (1998) and others in the select bibliography*).

39. Without democratic control, State intervention may become petty and restrictive or imbue education with a particular political philosophy or even start conditioning students.

VI. EDUCATION AND CULTURAL DEVELOPMENT

40. Mountains of research and writings and seas of ink have been devoted to the relationship between culture and education. There is no need to review that relationship here. Nevertheless, a number of questions remain unanswered: have we found ways and means of guaranteeing a genuinely pluralist, multicultural education that reflects the multi-ethnic nature of the world? Do we have reliable criteria for measuring the interaction of education, culture and the economy in order to create a process of development in which the human being is both actor and end product? Are there any indicators showing the universal values that education should develop in order to promote a global ethic and build the bridges of understanding and tolerance between different cultures and civilizations?

41. It is still necessary, in the meantime, to pursue and develop research into the relationship between the right to education and cultural roots; and into the role of education in respect for and the preservation of cultures and national unity and in the harmonious integration of economic, cultural, humanistic and ethical dimensions into development.

42. The emergence and dominance of the information society are fresh challenges to the right to education. How can information and knowledge be accessed without discrimination, how can they be analysed and selected? How can the wealth of individual cultures be reconciled with the trend towards the standardization of cultural models, spiritual values and ethical and behavioural considerations transmitted by the communications media?

43. How can education move beyond the notion that the media are basically means of facilitating learning and of transmitting and distributing knowledge and know-how in order to turn them to account and begin to improve our very approach to knowledge in order to develop analytical abilities, initiative and the sense of responsibility? How can the danger of public opinion being manipulated be reduced and removed?

44. Information technology and access to the virtual world can sometimes reduce the sense of reality. The right to education leads to a good knowledge of the world around us and enables us to integrate into it sensibly, but that requires suitable educational approaches.

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* The bibliography is available for consultation in the Committee secretariat.

VII. CONCLUDING REMARKS

45. The right to education makes new demands. It points up the need to develop, on an interdisciplinary base, new measures and corresponding indicators in line with the rapid development of science, but also following the criteria and benchmarks established by the international community and by consensus within the United Nations and United Nations bodies. These indicators would of necessity have to be multidisciplinary and multidimensional.

46. It would be useful to gain a deeper understanding of international benchmarks and of the typology of interventions beneficial to the right to education; and to study their short-term and long-term impact, particularly as regards their economic, social and cultural components and the preservation of equality in diversity.

47. Economic realities and budget constraints are a limiting factor and constitute a major obstacle to the development of educational systems as a whole and the enjoyment of education rights. It is therefore necessary not only to understand them, but also to know how to evaluate their long-term consequences using new indicators in order to avoid an outcome that runs counter to the objectives and to be able to respond to the demands of an economy in the throes of enormous upheavals.

48. Expenditure indicators should not be confined to showing the level of investment in education, but should also incorporate data on health, nutrition, the standard of living, the implementation of legal provisions, disparities among different groups and between the sexes, etc.

49. The concern to reform education in such a way as to incorporate recent data on development entails far-reaching changes in the structure and content of education. Now would be a good time to consider making further adjustments to the scientific content and the humanist and democratic values of behaviour patterns and to investigate the establishment of a continuum of renewed, renewable learning and skills (knowledge and know-how) in order to meet the need to be able to cope with tomorrow's uncertainties.

50. Characteristic of educational reforms are the number and variety of solutions devised to take account of the historical, economic, cultural and linguistic differences peculiar to each country. However, all such reforms must aim to produce an educating society capable, throughout each individual's life, of offering access to the means of controlling his destiny, helping to evaluate and guide development, including the development of education, and to integrate without difficulty into the society in which he lives.

51. The modern world is characterized by great linguistic diversity, which reflects its cultural diversity. Multilingualism is a reality in the vast majority of States and monolingual, mono-ethnic situations are the exception. Nevertheless, this diversity should not be a major obstacle to educational activities and even less so to the enjoyment of the right to education. The problem is not linguistic (the stage of a language's development) or demographic (minority-majority), but one of language status and of the hierarchical structure of functions. Those functions are a catalyst for the

forces that come into play in the political and economic system. It is obvious that, because of their instrumental, cultural and affective role for political, economic, social and cultural reasons, the use of languages (national or foreign) requires special attention and consideration not only of language's potential in the educational process, but also of the whole range of external factors that might influence decisions.

52. The enjoyment of the right to education should also take account of the fact that the society that is taking shape reflects the rapid changes taking place in all spheres in the context of internationalization and globalization. However, the reforms will be made effective not through the implementation of uniform programmes brought in from elsewhere, but through participation and initiative, backed up by diversity and competition that have grown up in freedom and respect for ethical and humanist values.

53. At this point, we should recall some of the factors that can make a decisive contribution to the success of educational reforms and the realization of the right to education. They include:

(a) The overriding need to have laid the foundation of a democratic society, which can ensure that global action will be taken and is the outcome of conscious, active participation by all concerned - a society which functions through many varied forms of collaboration, which is able to reach consensus and formulate objectives and in which new synergies can emerge;

(b) The harmonization and rational use of the full range of a society's educational resources (within or outside the educational system); flexibility and coordination;

(c) The regular analysis of trends in the variables that may contribute to the enjoyment of the right of education;

(d) The adoption of new kinds of action and indicators defined by democratic processes (e.g. the setting up of multicultural projects);

(e) A judicious, balanced choice of scientific contents and ethical and humanistic values;

(f) Prioritization of actions targeting:

(i) Specific population groups (young children, women and girls, indigenous peoples, ethnic, religious or linguistic minorities, inhabitants of rural areas, deprived groups, the disabled, etc.);

(ii) Major educational problems (literacy, efforts to combat educational wastage, the introduction of technologies and modern methods, education technology as a tool and a teaching technique, distance learning, etc.);

(g) Making use of international collaborative efforts (information exchanges, agreements with international institutions - the United Nations

and its specialized agencies, intergovernmental and non-governmental organizations - a variety of modalities of assistance, etc.).

54. Conscious effort and in-depth analysis of the interplay and interdependence of the various parameters will make it possible to build the school of the future: one of social solidarity, economic autonomy and cultural creativity. The school whose basic objectives include the desire to shape or change individual or collective attitudes to otherness; to eliminate the danger of marginalization and exclusion; and to maintain social cohesion. It will have achieved its objectives if it succeeds in improving the enjoyment of the right to education. We must build an education system that is capable of making a valid contribution to the development of the human being and "whose aim is the full flowering of man in all his richness and in the complexity of his expressions and obligations: individual, member of a family and of a community, citizen and producer, inventor of techniques and maker of dreams" ("Learning to Be", report of the International Commission on the Development of Education (Faure report), UNESCO, Paris, 1972). Is it not a wonderful thing to dream?

Annex

SUGGESTED RESEARCH LEADS FOR EXPLORATION IN THE FUTURE

1. Right to education: freedoms and responsibilities (individual and collective; citizenship); problems of participation; right of access to knowledge.

2. Right to education and to development; social dimensions; rights of solidarity.

3. Right to education and economic aspects: financing social equity; labour law and the labour market; cost of education for society and the individual; State's role in financing education in time of crisis.

4. Ethical (moral, humanist) aspects of the right to education.

5. Right to education and cultural roots.

6. Right to education and the use of the full range of society's educational resources; evaluation and recognition of experience, knowledge and know-how acquired outside the educational system.

7. How to devise coordinated strategies for the educational services and ensure the complementarity of the different types and levels of school (e.g., general and vocational education; secondary and higher education; State and private education).

8. Right to education and languages of education; economic, social and cultural aspects of the introduction of the mother tongue (national language, language of communication) into teaching.

9. Freedom of education and ability to innovate; ability to anticipate; ability to select and analyse information.

10. Evaluation of the implementation of the right to education: research into criteria; indicators; indivisibility and interdependence of human rights.

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GENERAL DISCUSSION: "RIGHT TO EDUCATION (ARTICLES 13 AND 14 OF THE COVENANT)"

Monday, 30 November 1998

How to measure the right to education: indicators and their potential use by the Committee on Economic, Social and Cultural Rights

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* The views expressed in this paper are those of the author and do not necessarily coincide with those of ECLAC.

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Introduction

1. The reports to be presented by States parties to the International Covenant on Economic, Social and Cultural Rights to the Committee on Economic, Social and Cultural Rights should be an occasion "for a broad review of national legislation, administrative rules and procedures and practices as they affect the application of the Covenant". 1/ Reporting also "serves as a way of identifying the obstacles to the realization of rights and creates a better understanding of the common problems faced by States and of the measures, including international assistance, which should be taken to overcome them". 2/

2. The aim of this working paper is to propose an indicator system for the right to education which is useful in the above-mentioned ways. This means that it can assist the Committee's monitoring function, provide information for a participatory policy debate and supply accurate information for decision-making.

3. The set of indicators proposed herein will basically have the following orientation. First of all, it helps to choose indicators that measure the right to education, as opposed to educational achievements. Second, the way in which indicators are presented allows for a comparison between countries while making visible interrelationships with underlying problems, and thus showing obstacles to the fulfilment of the right to education in each individual country. Third, it will be argued that it is important that indicators are used in a participatory policy dialogue on the progressive realization of the right to education.

Recent research on indicators

4. The literature proposes different sets of educational indicators. One of the most prominent ones in the 1990s has been the set of international education indicators proposed by the Organization for Economic Cooperation and Development (OECD) 3/ which measures a range of topics such as coverage, educational achievements, decision-making process, etc. It does not, however, include explicit indicators for measuring exclusion or inequality. As a result of the World Conference on Education for All held in Jomtien, Thailand, in 1990, 18 core indicators were proposed which measure mainly coverage and quality of education. 4/ Others suggest the importance of comparability over time and across countries. This is an important requisite for international comparison and for benchmarking as suggested by Paul Hunt of the University of Waikato, New Zealand, in his 1998 paper "State obligations, indicators, benchmarks and the right to education" presented at the same general discussion.

5. Several regional projects, such as an initiative undertaken jointly by ECLAC and the United Nations Educational, Scientific and Cultural Organization (UNESCO), aim at elaborating indicators for Latin America to measure equity and external efficiency of the educational system. One proposal made by ECLAC's principal expert in social statistics is the use of disaggregated indicators that allow for the identification of those factors that explain exclusion and/or inequality over the educational cycle. In certain contexts, for example, the access to primary education is more likely to be

influenced by urban-rural disparities, whereas gender differences become a discriminatory factor when entering secondary education (see box No. 1).

How to present indicators: the information pyramid

6. The main idea of the indicator system proposed in this paper is to present a few disaggregated key indicators in an information pyramid and then describe interrelationships with underlying problems. Bryk and Hermanson (1994) describe the system as follows: "Each report might then resemble an information pyramid. At its top would be a limited number of key indicators of status (and when presented as a time series, of progress) in some domain. 5/ Here one example could be a key indicator for coverage, such as enrolment rates for boys and girls in a certain age group. This key indicator shows an aggregate figure. The next two levels of the pyramid elaborate on these summary indicators. At level two, a carefully chosen expanded set of statistics would afford a more in-depth understanding of the forces at work behind the key indicator. This information would be a resource for brainstorming regarding future policy efforts". 6/ This information would describe interrelationships, for example, show how female enrolment is subject to opportunity costs, cultural variables, etc. "Level three would add a further dimension by reporting on selected research studies, including case studies, programme evaluations, and small-scale quantitative studies". 7/ For an example of an information pyramid on girls' enrolment rates at secondary level, see box No. 2.

7. There are several advantages to the presentation of indicators in an information pyramid. First of all, the pyramid is a very visual way of presenting information that is relevant to different audiences. The aggregate information may be important for monitoring and for providing public information, whereas the interrelationships and research results are important for decision makers when deciding on appropriate policies. Second, where the gathering of information is concerned, key indicators, which are easily available and disaggregated will allow for a common and comparable language across countries, whereas the interrelationships allow the specific context of each country to be explained. For example, several countries can have large illiteracy rates, but for different underlying reasons. Moreover, the introduction of case studies and programme evaluations allow a variety of actors, such as NGOs and international agencies, to bring in their experiences. Third, more specific and detailed information by country will enable the experts of the Committee to have a more informed discussion and enter into a dialogue with the States parties on their specific problems, resulting in more concrete recommendations. Fourth, in the case of a State party being interested in international technical or financial assistance for policies in favour of the realization of the right to education, it will have problem analyses available which can be used for project and programme planning and for setting goals. Let us imagine that they want to improve their literacy rates by 5 per cent within the next five years. The interrelationships will show where the bottlenecks are and the case studies provide lessons learned for possible policy solutions. Moreover, an information pyramid together with benchmarking would allow for coordination of national and international efforts in favour of clearly set objectives.

The advantages and disadvantages of different sources of information

8. One of the main arguments of this paper is that indicators have to be disaggregated in order to provide useful information for measuring the right to education. In this context, a short comment will be made with respect to the advantages and disadvantages of different sources of information.

9. Administrative registry. Indicators constructed on the basis of an administrative registry have the advantage that they are systematic and produced on a regular basis, i.e. can be compared over the years. They usually cover a large part of the population and are thus representative. Their disadvantage is that the indicators are aggregate and cannot be combined. Therefore, administrative registries can be used to indicate the enrolment rates in primary education of country X, but they cannot be used to determine where regional or gender disparities are.

10. Census. Censuses can provide very disaggregated and detailed information, but they are usually updated only every 10 years.

11. Household surveys. Household surveys have the advantage that they can be used to disaggregate and analyse information which can be combined to show interrelationships. With respect to illiteracy rates, for example, household surveys can show where the illiterates are, what their family background and their occupations are, etc. Their disadvantage is that they are based on samples and are therefore not necessarily as representative as administrative data.

12. For the construction of a relevant set of indicators it is important to take into account where the information comes from. Here, the suggestion is to make use of the comparative advantage of each information source and use, for example, administrative registry data for aggregate indicators and household surveys further down the information pyramid for disaggregation and to illustrate interrelated problems.

An indicator system to measure the right to education

13. The States parties to the Covenant recognize the right of every person to education. In its description of this right (art. 13) the Covenant stresses equality of access to primary, secondary and higher education, fundamental education for adults, constantly improving conditions for teachers, the liberty of parents to choose schools for their children and the liberty to establish independent schools. Moreover, the aim of education is set as the promotion of "understanding tolerance and friendship among all nations and all racial, ethnic and religious groups".

14. In order to establish an indicator system for the right to education, I propose to divide these requirements into three dimensions: (a) coverage; (b) quality of education; (c) exclusion/inequality. The question of liberty to choose the type of education will not be addressed by this indicator system, as I see a possible contradiction between the right of parents to choose schools for their children that are restricted to specific religious or socio-economic groups and the stipulation of the Covenant that education shall

promote tolerance and friendship among all nations and racial, ethnic and religious groups. There is still a lack of studies showing an international comparison of whether segregated schools contribute to or prevent tolerant behaviour.

15. I chose the three above-mentioned categories for measuring the right to education for the following reasons.

16. Coverage is the category most explicitly stated in the Covenant. Indicators for coverage should measure whether all groups in society really have access to different levels of education. As already described in former discussions on the right to education, indicators of coverage are "to be used to determine to what extent the right to education of each age, sex, social and ethnic group is satisfied in terms of conventionally defined levels (literacy, basic education, primary, middle or secondary and higher education, etc.). These indicators may obviously combine a number of variables, such as regional distribution, the urban-rural disparity, the ratio of public-sector to private-sector participation, the comparison between the same educational levels, etc." 8/ In order to measure coverage, it is not sufficient to use the concept of equality of opportunities, i.e. to verify whether national legislation provides equal opportunities before the law. Rather it is necessary to look at the outcome, i.e. measure whether different groups of society actually are in primary, secondary and higher education and where they are situated within the system. Therefore, one of the most important requirements of indicators for coverage is to provide disaggregated information to detect gender, race or other imbalances.

17. The second category, quality of education, is important, given that in order for persons to participate effectively in society, minimum standards of education must be offered and verified. Inequalities between schools should be made public so parents can make informed choices and individuals can compare the quality of education to which they have access. Here indicators will be used to provide information on the quality of education, its relevance for the labour market and on inequality of standards between schools.

18. The third category, exclusion/inequality, explicitly measures whether a State party recognizes the right of every person to education or whether certain groups are excluded from specific levels of education. Here, not only will the opportunity to access education in its different forms be measured, but also other factors that prevent certain groups from remaining in the system or from entering parts of the system. Language barriers, family background and hidden curricula constitute examples of important barriers.

19. The division into these three categories should help to distinguish the different dimensions of the right to education. Nevertheless, it must be stressed that they are closely linked, indeed indivisible. For the same reason, one indicator can be used to measure multiple dimensions, for example, disaggregated enrolment rates can be used to measure coverage as well as exclusion.

Examples of key indicators

20. As outlined above, I propose the use of a few disaggregated key indicators which will then be embedded into the national context through the information pyramid. In the following, I will provide examples of key indicators for each category:

(a) Coverage:

(i) School enrolment, repetition and drop-out rates at all levels, illiteracy rates;

(ii) All disaggregated data for rural-urban, male-female, different ethnic groups, immigrants and special needs;

(iii) Young people aged 15 to 19 not attending an educational establishment who are in the labour force or undertaking household domestic tasks, by sex and per capita income quartile of household, urban and rural areas; 9/

(b) Quality of education:

(i) Pupil/teacher ratio in private/public, urban/rural educational institutions;

(ii) Percentage of schools which have established forms of student participation through election of subjects, teachers or self-organization;

(iii) Percentage distribution of population 15 years old and over by educational attainment;

(iv) Occupational category of young persons aged 20 to 29 by level of educational attainment in urban and rural areas; 10/

(c) Exclusion/inequality:

(i) Persons aged 20 to 24 who have not surpassed their parents' educational level and who have completed fewer than 12 years of schooling, by sex and by educational level of parents, urban and rural areas; 11/

(ii) Number of schools where the mother tongue of ethnic and racial groups is taught in relation to number of children from these groups in each region;

(iii) Number of special programmes for immigrants and children with special needs, disaggregated by urban/rural area;

(iv) Expenditure per pupil in private/public, urban/rural educational institutions;

(v) Educational level and earnings of young people aged 20 to 29 with 12 years of schooling or more, by type of occupation and by numbers of years of schooling of parents; 12/

(vi) Representation of women in textbooks compared to that of men (outside and inside the home) in titles, figures and texts; 13/

(vii) Educational levels of the indigenous population/ethnic minorities, by language.

21. This is only a suggestion of a few key indicators. It is up to the experts of the Committee to choose indicators with the support of educational specialists in different areas so as to guarantee their relevance. This is especially important as different regions develop their educational system and move on to new problems.

22. In Latin America, for example, "despite the notable expansion of educational coverage in the region, over the last 15 years young people of different social strata have continued to face sharp disparities in terms of their opportunities for acquiring a level of education that would afford them a basic minimum of well-being. Currently, only about 20 per cent of the young people whose parents did not complete their primary education manage to complete the secondary cycle; in contrast, over 60 per cent of the children whose parents had 10 years of schooling or more do complete secondary school". 14/ It is therefore important to use new indicators, such as the one for intergenerational educational attainment, in order to measure problems of quality and inequality.

Indicators and policy dialogue

23. Within the framework of the Committee on Economic, Social and Cultural Rights, indicators will primarily be used for policy dialogue with interested States parties. The first step should be to monitor results with respect to the progressive realization of economic, social and cultural rights. Nevertheless, common indicators can also be used by other actors for policy dialogue because they help to identify national educational problems, discuss and set national priorities, and provide objectives for international technical and financial assistance.

24. Indicators can be a useful instrument for national and international NGOs, when contributing with written and/or oral information to the Committee, and to draw attention to urgent national educational problems. The information pyramid provides a space for information on the micro level and can include written background information provided by local NGOs. They can also be used by representatives of civil society for carrying certain problems into the centre of public discussion. On an international level, this is possible, for example, at the end of each session of the Committee when NGOs participate in the press conference where the recommendations of the Committee are made public.

25. For States parties, indicators on economic, social and cultural rights can be a useful instrument for benchmarking national policies. As a common

international language, they can be combined with the recommendations of the Committee to provide a clear analysis of the situation with respect to a certain right and the resources and policies necessary for its progressive realization. This clear picture is a good basis for the negotiation of additional resources from the international technical and financial assistance institutions and for the design of appropriate projects and programmes.

26. In summary, this working paper stresses two important requirements for a system of indicators for the right to education: first, that it shall provide information on the realization of the right to education disaggregated by sex, income group, urban-rural, ethnic and racial groups and special needs and not on educational attainment; second, that emphasis shall be placed on the process, i.e. how indicators are used in the discussion between the Committee and States parties, their respective civil societies and the international communities. The final aim is to assure that indicators are accepted and used for a participatory and constructive policy dialogue in favour of the progressive realization of economic, social and cultural rights.

Notes

1/ The Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16, United Nations, Geneva, 1991, p. 6.

2/ Ibid., p. 7.

3/ The set of international education indicators proposed by the OECD can be found in "Education at a Glance. OECD Indicators", OECD, Paris, 1992, p. 13.

4/ World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990. Inter-Agency Commission for the Conference on Education for All, New York, 1990.

5/ Anthony Bryk and Kim Hermanson, "Observations on the Structure, Interpretation and Use of Education Indicator Systems" in Making Education Count, OECD, Paris, 1994, p. 47.

6/ Ibid.

7/ Ibid.

8/ See "Reflections on indicators of the realization of the right to education", paragraph II, 1, background paper prepared by Victor Manuel Moncayo and Fernando Rojas, Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) for the Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights, Geneva, 25-29 January 1993, HR/Geneva/1993/SEM/BP.7, 29 December 1992. The report of the Seminar was submitted to the Preparatory Committee for the World Conference on Human Rights (A/CONF.157/73).

9/ This indicator is taken from UN-ECLAC Social Panorama of Latin America 1997 (United Nations publication, Sales No. E.98.II.G.3), Santiago, 1998, chap. V, table V.2.5.

10/ Ibid., chap. IV, figures IV.3.1 and IV.3.2.

11/ Ibid., chap. IV, table IV.1.2.

12/ Ibid., chap. IV, table IV.4.2.

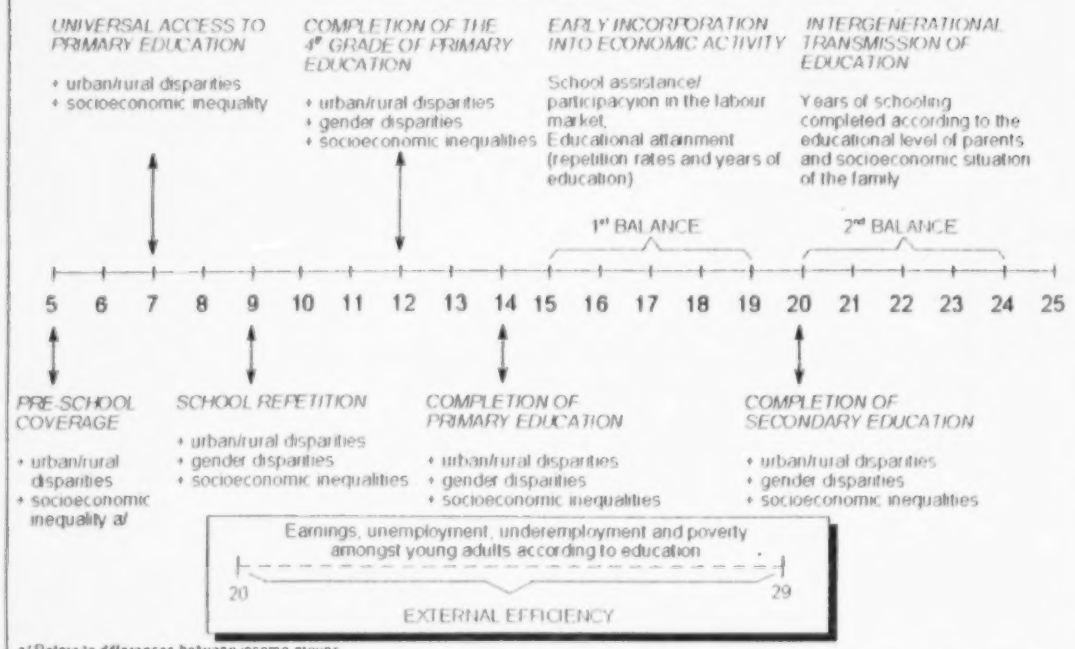
13/ This indicator is taken from Instituto de la Mujer, Ministerio de Asuntos Sociales de España and FLACSO, Facultad Latinoamericana de Ciencias Sociales, Latin American Women. Compared Figures, Santiago, 1995, p. 105.

14/ UN-ECLAC, op. cit., p. 65.

Box 1

INDICATORS FOR EQUALITY AND EXTERNAL EFFICIENCY OF THE EDUCATIONAL SYSTEMS USING INFORMATION FROM HOUSEHOLD SURVEYS

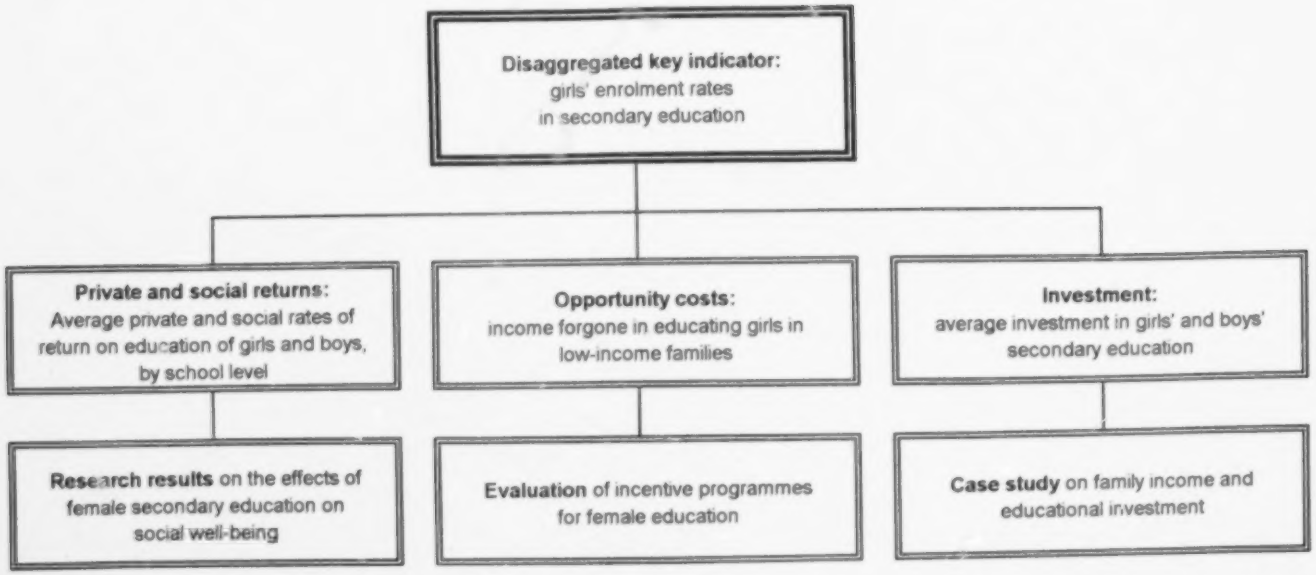
(Example based on an educational system of 12 years, 6 years of primary education and an official entrance age of six years)


UNIVERSAL ACCESS TO PRIMARY EDUCATION
• urban/rural disparities
• socioeconomic inequality
COMPLETION OF THE 4th GRADE OF PRIMARY EDUCATION
• urban/rural disparities
• gender disparities
• socioeconomic inequalities
EARLY INCORPORATION INTO ECONOMIC ACTIVITY
School assistance/ participacyion in the labour market.
Educational attainment (repetition rates and years of education)
INTERGENERATIONAL TRANSMISSION OF EDUCATION
Years of schooling completed according to the educational level of parents and socioeconomic situation of the family
1st BALANCE
2nd BALANCE
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
PRE-SCHOOL COVERAGE
• urban/rural disparities
• socioeconomic inequality a/
SCHOOL REPETITION
• urban/rural disparities
• gender disparities
• socioeconomic inequalities
COMPLETION OF PRIMARY EDUCATION
• urban/rural disparities
• gender disparities
• socioeconomic inequalities
COMPLETION OF SECONDARY EDUCATION
• urban/rural disparities
• gender disparities
• socioeconomic inequalities
Earnings, unemployment, underemployment and poverty amongst young adults according to education
20
29
EXTERNAL EFFICIENCY

a/ Refers to differences between income groups

Source: Presented by Arturo León (ECLAC's Principal Expert in Social Statistics) at the Seminar-Workshop on Educational Statistics of the countries of the Andres Bello Covenant (ABC), Cartagena, Colombia, 28 September - 2 October, 1998

Box 2: Example of an information pyramid


Disaggregated key indicator:
girls' enrolment rates
in secondary education
Private and social returns:
Average private and social rates of return on education of girls and boys, by school level
Opportunity costs:
income forgone in educating girls in low-income families
Investment:
average investment in girls' and boys' secondary education
Research results on the effects of female secondary education on social well-being
Evaluation of incentive programmes for female education
Case study on family income and educational investment

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NATIONS

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Item 7 of the provisional agenda

DAY OF GENERAL DISCUSSION:

RIGHT TO EDUCATION (ARTICLES 13 and 14 OF THE COVENANT)

Monday, 30 November 1998

Comparative analysis of the right to education as enshrined in articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights and provisions contained in other universal and regional treaties, and the machinery established, if any, for monitoring its implementation

Background paper submitted by Mr. José L. Gomez del Prado

GE.98-19789 (E)

I. INTRODUCTION

1. The right to education, like any other of the rights guaranteed by the International Bill of Human Rights, is interdependent with all human rights. By its nature and specificity, the right to education embodied in articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights extends beyond the limits of these articles and has many other dimensions. The provisions of articles 13 and 14 of the Covenant are interrelated with a number of human rights provisions contained in other instruments.

2. The right to education is closely linked to the civil and political rights to freedom of opinion, thought, conscience and religion, as well as political participation. In this context, it has been argued that the right to education falls into the category of the first generation of human rights. 1/ The right to education is also related to social rights inasmuch as it enables the individual "to participate effectively in a free society" and to have access to the skill and knowledge necessary to participate in society.

3. In addition, education and culture 2/ are so indissolubly linked that it is hard to separate the right to one from the right to the other. Education is necessary in order to have access to the cultural models, history and points of reference of the dominant social group of a given society. Education is also fundamental for the individual to be able to participate in the cultural life of that society and to appreciate the benefits of scientific progress. Within an ethnic, religious, cultural minority or indigenous group, education is not only the necessary instrument for learning and communicating in a given language and sharing ideas and beliefs (culture), but it is also indispensable for the life and survival of the group.

4. Lastly, the right to education is connected with economic rights, inasmuch as education promotes social mobility and integration into a modern economy. Education also allows the individual to take full advantage of the opportunities of society. The link between education and the economy is further demonstrated, on the one hand, by the fact that without adequate public financing the right to education cannot be guaranteed and, on the other hand, by the truism that spending in education is essential to long-term economic and social development: investment in education contributes to economic growth. 3/ Within this context, account should be taken of the impact of structural adjustment programmes on educational expenditure. 4/ Differences in provisions for and investment in education usually reflect differences in development and prosperity between countries, regions or classes. The right to education is also important because education provides the individual with the necessary skills and training to perform a given job or function from which he or she derives his or her place in society. Thus, it has been stated that the major linkage of education to the social structure is through the economy and that "modern elites tend to share a common education rather than a common class or caste". 5/

5. Because of its multifaceted nature, the right to education has been considered as an "empowerment" right providing "the individual with control over the course of his or her life, and in particular control ... over the

State ... The key to social action in defence of rights ... is an educated citizenry, able to spread its ideas and to organize in defence of its rights". 6/

6. By article 13.1 of the International Covenant on Economic, Social and Cultural Rights States parties "recognize 7/ the right of everyone to education". 8/ It further enumerates the other fundamental principles and goals of human rights education, and provides that education "shall be directed to the full development of the human personality and the sense of its dignity". 9/ Another of the aims of education is to "strengthen the respect for human rights and fundamental freedoms". It "shall enable all persons to participate effectively in a free society", 10/ "promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace".

7. Paragraph 2 of article 13 spells out the concrete action and steps States parties are to undertake in order to implement the right to education in accordance with the principles and goals contained in paragraph 1. The action to be developed in the social sphere 11/ may include legislation, administrative measures, programmes and the necessary economic investment. States recognize that:

> "(a) Primary education shall be compulsory and available free to all; 12/
>
> "(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
>
> "(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; 13/
>
> "(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
>
> "(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved".

8. By its compulsory nature, at least at the primary level, education not only confers a right but imposes a duty. This concept has been interpreted in article XXXI of the American Declaration of the Rights and Duties of Man as the duty to receive instruction. On the other hand, when an obligation is imposed by the State upon the persons under its jurisdiction it is expected from that State that it promote the corresponding right, adopting the necessary measures and developing a programme of action.

9. Article 13.3 provides, on the basis of the right to freedom of thought, conscience and religion, for the liberty of parents to choose for their children "schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions". 14/

10. Article 13.4 provides for the freedom of individuals to create and direct private educational institutions. This paragraph states that no part of article 13

> "shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State". 15/

11. Under Article 14:

> "Each State Party ... which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories 16/ under its jurisdiction compulsory primary education free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all".

This provision reinforces the principle that compulsory primary education should be made available and free for all, already contained in article 13.2 (a).

12. Article 15 of the Covenant does not deal specifically with the right to education. However, it contains important provisions that, owing to the interrelationship between education and culture, should be taken into consideration, such as: (i) participation to cultural life; (ii) enjoyment of the benefits of scientific progress; (iii) freedom for academic research. This link has been further reinforced by the provisions of articles 29.1 (c), 28.3 and 30 of the Convention on the Rights of the Child. These articles refer to the development of respect in the child for his or her own cultural identity, language and values; respect for the national values of the country in which she or he lives and of those of the country from which she or he may originate; respect for civilizations different from his or her own; access to scientific and technical knowledge; and the right of the child belonging to an ethnic, religious or linguistic minority or of indigenous origin to enjoy his or her own culture.

13. Taking into account the above-mentioned elements of articles 13 and 14 of the Covenant, an attempt will be made in the present paper to draw up an inventory and a comparative analysis of provisions concerning the right to education contained in other universal and regional treaties and the machinery

that has been established for monitoring its implementation. Only the provisions of binding instruments (human rights treaties) have been considered for the purposes of this inventory.

14. Provisions contained in other international instruments, such as resolutions or declarations, on the right to education have not been taken into consideration in this paper. Among those instruments which have not been studied, the following should be mentioned: United Nations Declaration on the Elimination of All Forms of Racial Discrimination; Declaration on the Elimination of Discrimination against Women; Declaration of the Rights of the Child; Declaration on the Rights of Disabled Persons; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); Cairo Declaration on Human Rights in Islam; American Declaration of the Rights and Duties of Man; Vienna Declaration and Programme of Action.

15. However, several instruments that are not legally binding have been considered, as being of particular importance. These exceptions are the Universal Declaration of Human Rights - having regard to its juridical status 17/ - and the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty - with the object of having in the inventory provisions on the right to education for a particular group of persons which otherwise would not have been reflected. Lastly, the 1975 Helsinki Final Act has also been included in the inventory because of the successful bodies and activities to which it has given rise.

II. PROVISIONS ON THE RIGHT TO EDUCATION CONTAINED IN OTHER HUMAN RIGHTS TREATIES

A. Universal human rights treaties

1. Universal Declaration of Human Rights

16. Article 26 of the Declaration constitutes the basis of the provisions on the right to education contained in the International Covenant on Economic, Social and Cultural Rights. The main elements which have been further developed in the Covenant are contained in the Declaration. The general principles of the right to education, with the exception of two additional concepts ("the sense of dignity" and "enable all persons to participate effectively in a free society"), are practically the same in both instruments. The measures to be taken in order to fulfil the right to education are more comprehensive in the Covenant than in the Declaration. They include, in particular, measures directed to groups which have been deprived of primary education as well as the development of a system of schools at all levels. The liberty of parents to choose the kind of education their children are given, provided for in the Declaration, is extended in the Covenant to the liberty of individuals and bodies to establish and direct educational institutions. Article 26 18/ of the Declaration states:

"1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

"2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

"3. Parents have a prior right to choose the kind of education that shall be given to their children."

2. International Covenant on Civil and Political Rights

17. Article 18 of the Covenant guarantees to everyone the right to freedom of thought, conscience and religion. Under paragraph 4 of that article, States parties "undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions". This same guarantee is contained in article 13.3 of the International Covenant on Economic, Social and Cultural Rights. The other provision of article 13.3, concerning the liberty of parents to choose schools for their children, which is more specific to the right to education, is not spelled out in article 18 of the Covenant on Civil and Political Rights, although it is implicit therein.

18. The right to education is also implicitly contained in article 27 of the International Covenant on Civil and Political Rights. That article guarantees to persons belonging to ethnic, religious or linguistic minorities "the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". 19/

3. International Convention on the Elimination of All Forms of Racial Discrimination

19. Under article 5 of the Convention, "States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ..." a number of civil, political, economic, social and cultural rights, including "the right to education and training".

20. Article 7 of the Convention provides for the adoption by States parties of "immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination". Under the same article States parties also undertake to adopt immediate and effective measures "with a view to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter

of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention". With a few variations, this second part of the article reproduces the goals regarding the right to education contained in article 13.1 of the Covenant. The main change consists in replacing the words "further the activities of the United Nations for the maintenance of peace" by "propagating the purposes and principles of the Charter of the United Nations". It should be also noted that the reference to "religious groups" in the Covenant has been dropped in the Convention. 20/

4. Convention on the Elimination of All Forms of Discrimination against Women

21. Article 10 of the Convention spells out the measures that States parties must take in order to ensure women equal rights with men in the field of education. These measures must be aimed at ensuring:

"(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

"(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

"(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

"(d) The same opportunities to benefit from scholarships and other study grants;

"(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

"(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

"(g) The same opportunities to participate actively in sports and physical education;

"(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."

22. All these measures, though directed towards a given group and much more specific and concrete, are of the same type of social measures as those

contained in article 13.2 (a) to (e) of the Covenant. They address the availability of and access to resources and goods on an equal basis. They are also aimed at eliminating de facto discrimination. 21/

5. Convention on the Rights of the Child

23. The provisions of this Convention concerning the right to education are, after the UNESCO Convention against Discrimination in Education, the most exhaustive of all the universal human rights treaties. This is due to the nature of the group for which they are intended. Four articles of the Convention contain provisions on the right to education: articles 17, 28, 29 and 30. Article 17 deals with the need to ensure to children access to a variety of sources of information and recognizes the beneficial function the mass media can play in achieving the goals of education. Article 28 spells out the measures States parties have to undertake to fulfil their obligations with respect to the right of the child to education. Article 29 covers the goals of education and includes a provision regarding the liberty of individuals and institutions to establish and direct private educational institutions. Article 30 adapts the provisions of article 27 of the International Covenant on Civil and Political Rights to the child belonging to an ethnic, religious or linguistic minority or who is of indigenous origin.

24. Under article 17, States parties shall:

"(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

"(b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

"(c) Encourage the production and dissemination of children's books;

"(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

"(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18." 22/

25. Under article 28, States parties shall:

"1.(a) Make primary education compulsory and available free to all;

"(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

"(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

"(d) Make educational and vocational information and guidance available and accessible to all children;

"(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates."

Paragraph 2 of the same article, provides that States parties "shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention". Under paragraph 3, States parties, taking account of the needs of developing countries, undertake to "promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods".

26. If article 28 of the Convention is compared with parallel article 13 of the Covenant, it is to be noted that some guarantees have not been retained in the Convention on the Rights of the Child, such as: (i) the progressive introduction of free higher education; (ii) the development of a system of schools at all levels; (iii) an adequate fellowship system; and (iv) the continuous improvement of the conditions of teaching.

27. Article 29 contains the goals and principles of the child's education. States parties agree that education shall be directed to:

"1. (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

"(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

"(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

"(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

"(e) The development of respect for the natural environment."

Paragraph 2 of article 29 guarantees the liberty of individuals and bodies to establish and direct educational institutions.

28. Article 30 is worded negatively. It provides that a child belonging to an ethnic, religious or linguistic minority or of an indigenous origin shall

not be denied the right to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

6. Convention relating to the Status of Refugees

29. Two articles of the Convention address the education of refugees: article 4 on religion and article 22 regarding public education. In accordance with article 4, "States shall accord to refugees ... freedom as regard the religious education of their children". Article 22 provides that the same treatment shall be accorded to refugees as to nationals with regard to elementary education. In addition, "States shall accord to refugees treatment as favourable as possible ... with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships".

7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 23/

30. Provisions relating to the right to education are contained in four articles of this Convention: articles 12, 30, 43 and 45. Article 12 guarantees the right of migrant workers and members of their families to freedom of thought, conscience and religion, including the right to manifest their religion or belief in teaching. Under the same article, States parties undertake to respect the liberty of migrant worker parents to ensure the religious and moral education of their children in conformity with their own convictions.

31. The right of access of migrant workers' children to education on an equal basis with nationals is guaranteed under article 30. This article also stipulates that "access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment".

32. Article 43 provides, inter alia, for equal treatment of migrant workers with nationals regarding access to educational institutions and services, access to vocational training and retraining facilities and institutions, and access to and participation in cultural life.

33. Article 45 provides for equality of treatment with nationals for members of the families of migrant workers rights, on the same basis as article 43, regarding access to educational institutions and services, vocational training institutions and participation in cultural life. In addition, under article 45, States of employment undertake to pursue a policy "aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language". Also, "States of employment may provide special schemes of education in the mother tongue of children of migrant workers".

8. Standard Minimum Rules for the Treatment of Prisoners

34. Rule 77 stipulates that "(1) Provision shall be made for the further education of all prisoners capable of profiting thereby ... The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration. (2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty."

9. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

35. Section IV E, "Education, vocational training and work", contains specific rules regarding the right to education. Rules 38 and 41 deal with education, rules 42 and 43 with vocational training. Rule 38 stipulates:

> "Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education."

36. In accordance with rule 39, "juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes".

37. Rule 40 states that "diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized".

10. UNESCO Convention against Discrimination in Education

38. Article 1 of the Convention defines the terms "discrimination" and "education". Article 2 identifies those situations which do not constitute discrimination within the definition given in article 1, when a number of conditions are fulfilled, in particular: the establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, or for religious or linguistic reasons, or if the object of the institutions is not to secure the exclusion of any group but to provide additional facilities in addition to the ones provided by the public authorities.

39. The steps to be taken by States parties in order to eliminate and prevent de jure and de facto discrimination are described in article 3, in particular they undertake:

"(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

"(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

"(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

"(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

"(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals."

40. Article 4 contains the programme of action States parties must undertake to implement the obligations laid down by the Convention. It includes the formulation, development and application of a national policy which

"will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

"(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

"(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;

"(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

"(d) To provide training for the teaching profession without discrimination."

41. The principles and general goals of education are spelled out in article 5.1 (a). They include the full development of the human personality; the strengthening of respect for human rights and fundamental freedoms; the promotion of understanding, tolerance and friendship among all nations, racial or religious groups and the furthering of United Nations activities for the maintenance of peace. Subparagraph (b) of article 5.1 contains guarantees to: respect the liberty of parents to choose for their children institutions other

than those maintained by the public authorities; and ensure the religious and moral education of the children in conformity with their own convictions. Furthermore, it stipulates that "no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions". In accordance with subparagraph (c), States "recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and... the use or the teaching of their own language ...".

11. ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation

42. Pursuant to the definition given in Article 1 of the Convention "occupation", includes among other meanings, "access to vocational training". Under article 3, "Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice: (...)(b) To enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy".

12. ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries 24/

43. Article 7.2 of the Convention contains a reference to education and articles 21 and 22 a number of references to vocational training measures, including "the provision of special training programmes and facilities" which "shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned".

44. Article 26 stipulates: "Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community".

45. In accordance with article 27, "Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them to address their social needs and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations." The authorities shall ensure their training and involvement in the "formulation and implementation of education programmes, with a view to the progressive transfer of responsibilities for the conduct of these programmes to these peoples as appropriate". Furthermore, "governments shall recognize the right of these peoples to establish their own educational institutions and facilities. Appropriate resources shall be provided for this purpose".

46. Pursuant to article 28, measures shall be taken to teach children belonging to the peoples concerned "to read and write in their own indigenous language or in the language most commonly used by the group to which they belong", "to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country" and "to preserve and promote the development and practice of the indigenous languages of the peoples concerned".

47. Article 29 states that "the imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples".

48. Article 30 stipulates that "Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned to make known to them their rights and duties, especially in regard ... to education ... If necessary ... by means of written translations and through the use of mass communications in the languages of these peoples".

49. Finally, in accordance with article 31, "educational measures shall be taken among all sections of the national community ... with the object of eliminating prejudices ... [and] to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples".

13. Geneva Convention relative to the Treatment of Prisoners of War

50. Article 38 of the Convention provides that "while respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational and recreational pursuits ... amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment".

14. Geneva Convention relative to the Protection of Civilian Persons in Time of War

51. In accordance with article 94 of the Convention "the Detaining Power shall encourage intellectual, educational and recreational pursuits amongst internees ... It shall take all practical measures to ensure the exercise thereof, in particular by providing suitable premises".

15. Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts

52. Paragraph 2 of article 78, "Evacuation of children", states that "whenever an evacuation occurs ... each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity".

B. Regional human rights treaties

1. Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention

53. Article 2 of the Protocol provides:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

2. European Social Charter (Revised)

54. The revised Social Charter contains a number of provisions relevant to the right to education. Under paragraph 3 of article 7, "The right of children and young persons to protection", States undertake "to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education".

55. Article 10 enumerates a number of measures to be undertaken to comply with the right to vocational training.

56. Article 15 "The right of persons with disabilities to independence, social integration and participation in the life of the community", contains guarantees which "provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, private or public".

57. Article 17 "The right of children and young persons to social, legal and economic protection", contains provisions aimed at "ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities". In particular, the Parties to the Charter should take all appropriate and necessary measures: "1 (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; ... 2. to provide children and young persons a free primary and secondary education as well as to encourage regular attendance at school".

58. In accordance with article 19 - The right of migrant workers and their families to protection and assistance - States undertake, inter alia, "11. to promote and facilitate the teaching of the national language of the receiving State or, if there are several, one of these languages, to migrant workers and members of their families; 12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker".

3. European Convention on the Legal Status of Migrant Workers

59. Two articles of the Convention include specific provisions on the right to education. Article 14 - Pretraining - Schooling - Linguistic training - Vocational training and retraining - states that migrant workers "shall be entitled, on the same basis and under the same conditions as national workers, to general education and vocational training and retraining and shall be granted access to higher education according to the general regulations

governing admission to respective institutions in the receiving State". The receiving State shall also "facilitate the teaching of its language or, if there are several, one of its languages to migrant workers and members of their families".

60. Under article 15 - Teaching of the migrant worker's mother tongue - concerned States "shall take actions by common accord to arrange, so far as practicable, for the migrant worker's children, special courses for the teaching of the migrant worker's mother tongue, to facilitate, inter alia, their return to their State of origin".

4. Helsinki Final Act

61. In the Declaration on Principles Guiding Relations between Participating States, adopted at the Conference on Security and Co-operation in Europe (CSCE), the participating States declared their determination to respect and put into practice "VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief". Under this guiding principle, the States undertake to "act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration on Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound".

62. Concerns for the right to education are contained in other CSCE documents such as: the Concluding Document of the 1986 Vienna Meeting in the section entitled "Co-operation and exchanges in the field of education"; the 1990 Charter of Paris for a New Europe, under "Human rights, democracy and rule of law", which includes provisions regarding economic, social and cultural rights and the protection of the rights of ethnic, linguistic and religious minorities, as well as the protection of the rights of migrant workers and their families; the Document on the Moscow Meeting which recognizes and ensures that all CSCE commitments relating to the protection and promotion of women; the Helsinki Document which contains in the section entitled "Enhanced commitments and co-operation in the Human Dimension", provisions relating to national minorities, indigenous populations, migrant workers, refugees and displaced persons and on tolerance and non-discrimination.

5. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" 25/

63. The right to education is enshrined in article 13 - Right to education - of the Additional Protocol. Paragraph 1 stipulates: "Everyone has the right to education". Paragraph 2 spells out the goals of education: it should be directed towards "the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace ... to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence ... foster understanding, tolerance and friendship among all nations

and all racial, ethnic or religious groups and promote activities for the maintenance of peace". In paragraph 3, the States parties recognize that in order to achieve the right to education:

"(a) Primary education should be compulsory and accessible to all without cost;

"(b) Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

"(c) Higher education should be made equally accessible to all on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;

"(d) Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;

"(e) Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies".

In addition, paragraphs 4 and 5 of this article guarantee the right of parents to select the type of education they wish for their children and the freedom of individuals and entities to establish and direct educational institutions.

64. The right of everyone to participate in the cultural and artistic life of the community and to enjoy the benefits of scientific and technological progress is set out in article 14.

65. Article 16 - Rights of children - reiterates the right of every child "to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system", set out in article 13.

6. African Charter on Human and Peoples' Rights

66. Article 17 of the Charter provides that: "1. Every individual shall have the right to education. 2. Every individual may freely take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State".

7. African Charter on the Rights and Welfare of the Child 26/

67. The Charter contains very exhaustive and far-reaching provisions with regard to the right of children to education. Article XI - Education - paragraph 1 states that "every child shall have the right to education". Paragraph 2 specifies that education should serve: to promote and develop the personality, talents and abilities of the child; to foster respect for human rights and fundamental freedoms; to preserve and strengthen positive African

morals, traditional values and cultures; to prepare the child for a responsible life in a free society; to preserve national independence and territorial integrity; to promote and achieve African unity and solidarity; to develop respect for the environment and natural resources; and to promote the child's understanding of primary health care.

68. Article XI, paragraph 3, spells out the appropriate measures that should be taken in order to realize fully the right to education. In particular, States should: "(a) provide free and compulsory basic education; (b) encourage the development of secondary education in its different forms and ... progressively make it free and accessible to all; (c) make higher education accessible to all on the basis of capacity and ability by every appropriate means; (d) take measures to encourage regular attendance at schools and the reduction of the drop-out rate; (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community".

69. Provisions guaranteeing the freedom of parents to choose for the children schools other than those established by the public authorities and the liberty of individuals and bodies to establish and direct educational institutions are contained respectively in article XI, paragraphs 4 and 6.1.

70. Article XI, paragraph 5, provides that States should "take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect". Paragraph 6 stipulates that "children who become pregnant before completing their education shall have the opportunity to continue their education".

71. In accordance with article XIII - Handicapped children - States "(...) shall ensure that the disabled child has effective access to training, (...) in a manner conducive to the child's achieving the fullest possible social integration, individual development and his cultural and moral development".

72. Article XX - Parental responsibilities - provides that States parties shall have the duty to assist parents and "in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing".

73. Article XXIII stipulates that refugee children should "receive appropriate protection and humanitarian assistance in the enjoyment of the rights" set forth in the Charter and other international human rights and humanitarian instruments. These provisions apply likewise to internally displaced children.

74. Article XXXI sets out the child's "responsibilities towards his family and society, the State".

III. MACHINERY ESTABLISHED FOR MONITORING PROVISIONS REGARDING THE RIGHT TO EDUCATION

75. This part deals with the machinery established at the global and regional levels to supervise compliance with and monitor the implementation by

States parties 27/ of the provisions of the relevant instrument. Each treaty establishes its specific machinery. In addition, the constitutions of international organizations such as ILO and UNESCO contain procedures to monitor and supervise the application of conventions adopted under their aegis. Three main types of mechanisms or procedures have been established under the human rights treaties: the reporting mechanism; the inter-State complaint procedure and the individual/group complaint procedure. Extra-conventional procedures such as those established by ECOSOC under resolutions 1235 of 1967, and 1503 of 1970 have not been taken into account.

A. In the universal human rights treaties

1. The Committee on Economic, Social and Cultural Rights

76. The Committee was established pursuant to Economic and Social Council resolution 1985/17. It comprises 18 members, nationals of States parties. In accordance with article 16 of the International Covenant on Economic, Social and Cultural Rights, States parties submit periodic reports on the measures they have taken and the progress made in complying with their obligations to realize the rights recognized in the Covenant. These reports are considered by the Committee. The Covenant does not provide for an inter-State complaints procedure or an individual complaints procedure against States parties to the Covenant. A draft optional protocol to the Covenant that would introduce the right of individual petition and allow the Committee to hear such complaints has been under consideration for some years, but has not yet been adopted. 28/

2. The Human Rights Committee

77. The Human Rights Committee was established in accordance with article 28 of the International Covenant on Civil and Political Rights. It is composed of 18 members, nationals of States parties. Under article 40, States have to submit periodic reports to the Committee on the measures they have adopted to give effect to the rights enumerated in the Covenant. The Committee has the competence to consider inter-State or individual complaints against those States parties which have accepted the Committee's jurisdiction under article 41 and the Optional Protocol respectively. These two procedures are optional.

78. No written communication appears to have been submitted so far to the Human Rights Committee, under article 2 of the Optional Protocol, regarding the right to education in relation to the provisions of either article 18 or article 27 of the Covenant. The Committee, however, has recently been seized of an individual complaint under the Optional Protocol in which the author claims that the rights contained in article 26 of the Covenant have been violated. The complaint has been submitted on behalf of a minority group. The claimant states that the assistance and subventions to educational institutions run by another minority group granted by public authorities have been awarded on the basis of preference and are discriminatory.

3. The Committee on the Elimination of Racial Discrimination (CERD)

79. The Committee on the Elimination of Racial Discrimination was established in accordance with article 8 of the International Convention on

the Elimination of All Forms of Racial Discrimination. The 18-member Committee, composed of nationals of States parties, is empowered to consider, under article 9, the periodic reports that States parties must submit on the measures they have adopted to give effect to the provisions of the Convention. Likewise, the Committee has jurisdiction to consider inter-State complaints. This mechanism, provided for in articles 11 and 12, is not an optional provision, but is accepted by the States parties at the moment they ratify or accede to the Convention. Article 14 provides for an individual complaints procedure. This mechanism is optional: a State party may make a declaration recognizing the competence of the Committee to be seized of individual complaints against it.

80. The Committee, pursuant to article 15, receives copies of petitions submitted to United Nations bodies by inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies. This is not an optional provision.

4. The Committee on the Elimination of Discrimination against Women

81. The 23-member Committee, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women, considers the progress made in the implementation of the Convention through its consideration of the periodic reports that States parties must submit in accordance with article 18. The World Conference on Human Rights, which met in Vienna in 1993, called for the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. 29/ However, no other monitoring mechanisms than the reporting system have been established so far.

5. The Committee on the Rights of the Child

82. The Committee on the Rights of the Child was established pursuant to article 43 of the Convention on the Rights of the Child for the purpose of examining the progress made by States parties in realizing the provisions of the Convention. The Committee, composed of 10 experts, has jurisdiction to examine the periodic reports of States parties. No other monitoring mechanism is available for the time being to the Committee.

6. Statute of the Office of the United Nations High Commissioner for Refugees (General Assembly resolution 428 (V) of 14 December 1950)

83. General Assembly resolution 428 (V) of 14 December 1950 contains provisions regarding the protection measures the United Nations High Commissioner for Refugees should provide to refugees falling under the competence of his(her) Office, in particular by promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection, and by obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them.

7. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

84. Article 72 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 30/ provides for the establishment of a committee composed of 10 members for a preliminary period and 14 members after 41 States have ratified the Convention. The Committee will monitor the reporting mechanism established under articles 73 and 74. In addition, the Committee will have jurisdiction under two optional monitoring mechanisms established by the Convention in accordance with article 76, dealing with the inter-State complaints procedure, and article 77, concerning the individual complaints procedure.

8. The implementation of the UNESCO Convention against Discrimination in Education and the Conciliation and Good Offices Commission established by the Protocol to the Convention against Discrimination in Education

85. Pursuant to article VIII of the UNESCO Constitution, each Member State shall submit to the organization reports on the measures taken upon the recommendations and conventions adopted by the General Conference. Furthermore, States parties to the Convention against Discrimination in Education undertake, under article 7 of the Convention, to submit periodic reports to the General Conference. In this context, it should be noted that article 6 of the Convention provides that States parties should pay the greatest attention to any recommendations adopted by the General Conference of UNESCO defining the measures to be taken against discrimination in education.

86. In addition, the Conciliation and Good Offices Commission was established under article 1 of the Protocol. It is responsible for seeking the amicable settlement of disputes between States parties (inter-State complaints mechanism) to the Convention against Discrimination in Education. The Commission is composed of 11 experts.

9. International Labour Organization

87. Under articles 22 and 35 of the ILO Constitution, Member States undertake to submit reports on ratified ILO conventions (periodic report mechanism). Two bodies examine those reports. The first of these is an independent organ composed of 20 experts: the Committee of Experts on the Application of the Conventions and Recommendations, whose main task is to consider reports submitted by Governments on implementation of the conventions which have been ratified by member States (174). The Committee of Experts reports to the Governing Body of ILO.

88. With regard to violations to the right to education contained in the provisions of relevant ILO conventions, for example, the Committee of Experts, in its 1998 session, dealt with a number of situations under Convention No. 111: Discrimination (Employment and Occupation). In respect of Afghanistan, the Committee of Experts was seized of a communication from the International Confederation of Free Trade Unions (ICFTU) alleging that the Taliban armed militia enforced a strict code of conduct restricting women to

their homes and that girls and women are banned from going to school and attending higher education institutes. The Committee of Experts also took note of other developments regarding the right to education in Bangladesh, Bulgaria and Cuba. 31/

89. The other body dealing with these procedures is composed of representatives of governments, employers and workers: the Committee on the Application of Conventions and Recommendations. It is established at each annual session of the International Labour Conference. This sessional committee takes as the basis for its work the report of the independent Committee of Experts and invites the member States concerned to provide information regarding the observations made by the Committee on the fulfilment of their obligations. The Committee on the Application of Conventions and Recommendations reports to the ILO Conference.

90. In accordance with articles 26 to 34 of the ILO Constitution, any Member State or the Governing Body of ILO, either at its own initiative, or upon receipt of a complaint (complaint procedure) from a delegate - government, worker or employer - to the International Labour Conference, may submit a complaint regarding the effective compliance of the provisions of any Convention which has been ratified by a given Member State. When a complaint has been lodged, the Governing Body of ILO may appoint a commission of inquiry to carry out an investigation.

91. Under articles 24 and 25, employers' and workers' organizations may submit a complaint (representation procedure) against a Member State which, in their opinion, has failed to fulfil the provisions contained in any of the conventions to which it is a party. The complaint is examined by a committee of three members, and then by the Governing Body of ILO 32/

10. The International Committee of the Red Cross and the International Fact-Finding Commission

92. Under the Geneva Conventions of 1949, the International Committee of the Red Cross enjoys a number of prerogatives to monitor the application of the provisions contained in those Conventions. In accordance with article 126 of the Geneva Convention relative to the Treatment of Prisoners of War, for example, delegates of ICRC "shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war". Under article 143 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, delegates of ICRC "shall have access to all premises occupied by protected persons and shall be able to interview the latter without witness, personally or through an interpreter".

93. Pursuant to article 81 of Protocol I Additional to the Geneva Conventions of 1949, "The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions". In addition, article 90 of the Protocol provides for an International Fact-Finding Commission consisting of 15 experts competent to inquire into any facts alleged to be a grave breach or other serious violation

of the Conventions or of the Protocol and to facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and the Protocol.

B. In the regional human rights treaties

1. The European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 2, as amended by Protocol No. 11 restructuring the control machinery

94. Protocol No. 11 replaces the machinery established by the European Convention for the Protection of Human Rights and Fundamental Freedoms to ensure the observance of the engagements undertaken by the signatories, consisting of the European Commission of Human Rights and the European Court of Human Rights, with only one supervisory organ: the new permanent European Court of Human Rights.

95. In accordance with its article 4, Protocol No. 11 entered into force on 1 November 1998. On 3 November 1998, the new restructured permanent Court took up its functions in Strasbourg.

96. The European Court of Human Rights has competence to deal with individual/group petitions (individual complaints procedure) alleging violations to the right to education covered by the provisions contained in article 2 of Protocol No. 1 to the Convention.

97. Alleged breaches of the provisions of the Convention committed by a State member may also be submitted to the European Court of Human Rights by another State member (inter-State complaints procedure).

2. The Expert Committee established under the European Social Charter

98. The Committee of Experts established under the European Social Charter, consisting of no more than seven members, examines, in accordance with articles 21 to 24 of the Charter, the periodic reports of Contracting Parties (reporting mechanism) concerning the application of the provisions of the Charter.

3. The Consultative Committee on the Application of the European Convention on the Legal Status of Migrant Workers

99. Article 33 of the Convention provides for the establishment of a Consultative Committee composed of a representative of each of the Contracting Parties, with a view to facilitating or improving the application of the Convention.

4. The Organization for Security and Co-operation in Europe

100. The Helsinki Final Act was not intended to be legally binding but to be a loose structure creating political commitments. 33/

101. The Conference on Security and Co-operation in Europe, established under the 1975 Helsinki Final Act, became the Organization for Security and Co-operation in Europe (OSCE) in 1994. This organization deals with human rights issues at a regional level. It comprises over 50 countries and has developed follow-up procedures consisting of convening periodic intergovernmental meetings. Substantive human right issues are considered at these meetings, including compliance with international and/or regional human rights norms.

102. At the 1992 Helsinki Conference, the office of the High Commissioner on National Minorities was created. The main task of the High Commissioner is to address problems early, before they become an open conflict.

5. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights established under the American Convention on Human Rights: "Pact of San José, Costa Rica"

103. The Inter-American Commission is both a Charter organ, created by the Organization of American States, and a body set up under the American Convention, in accordance with article 33. As a Charter organ, the Commission has jurisdiction over all OAS Member States. It is composed of seven members elected by the General Assembly of OAS. The Inter-American Court, the other organ established under the American Convention, consists of seven judges elected by the States parties to the Convention. Both organs supervise the implementation of the Convention.

104. In accordance with article 41 of the American Convention, the Inter-American Commission is empowered to carry out promotional activities. This article also provides for the Inter-American Commission to conduct field missions to investigate in loco the situation of human rights in any member country of OAS whether or not it has ratified the American Convention.

105. In addition, the Commission, pursuant to article 44 of the Convention, has the competence to receive and examine individual/group petitions containing allegations that rights protected by the Convention have been violated by a State party (individual complaints procedure).

106. The American Convention empowers the Inter-American Court to adjudicate disputes regarding allegations that a State party has violated the Convention. 34/ Only States parties and the Inter-American Commission have the right to submit a case to the Court (article 61).

107. Alleged violations to the provisions with respect to the right of education contained in the Protocol of San Salvador, once this instrument enters into force, may be examined by the Commission and the Court.

108. Article 42 provides the Inter-American Commission to receive copies of the annual reports submitted by States parties to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture. The Inter-American Commission may monitor

to what extent the promotion of the economic, social, educational, scientific and cultural rights set forth in the OAS Charter are being implemented (reporting procedure).

6. The African Commission on Human and Peoples' Rights established under the African Charter on Human and Peoples' Rights

109. The African Charter provides for the establishment of an African Commission on Human and Peoples' Rights within the Organization of African Unity. The Commission is composed of 11 members elected by the OAU Assembly of Heads of State and Government. The functions of the Commission are to promote and protect human and peoples' rights in Africa. In the area of promoting these rights, the Commission may conduct studies, convene meetings, issue publications, disseminate information and cooperate with local organizations. The Commission may also formulate guidelines concerning national legislation.

110. The Commission is competent to receive and consider communications from a State member of OAU alleging that another State member has violated the Charter (inter-State complaints procedure).

111. The Commission is also empowered to consider other types of communications. The Secretary of the Commission "shall make a list ... and transmit it to the members of the Commission, who shall indicate" which communications are admissible (art. 55 of the Charter). When the communications "relate to special cases which reveal the existence of a series of serious or massive violations of human and people's rights", the Commission must draw the attention of the Assembly of Heads of State and Government. The Assembly may then request the Commission to conduct an in-depth study and submit a report (art. 58). This complaints procedure is closer to that established in Economic and Social Council resolution 1503 (XLVII) than the individual complaints procedure established by the Optional Protocol to the International Covenant on Civil and Political Rights and other similar mechanisms.

7. The Committee on the Rights and Welfare of the Child established under the African Charter on the Rights and Welfare of the Child

112. The Charter provides for the establishment of an African Committee of Experts on the Rights and Welfare of the Child within the Organization of African Unity. The Committee shall consist of 11 members elected by the Assembly of Heads of State and Government. The main functions of the committee will be: to promote and protect the rights and welfare of the child; to monitor the implementation and ensure protection of the rights contained in the Charter; to interpret the provisions of the Charter.

113. The Committee will monitor the States' implementation and compliance of the rights set forth in the Charter through the periodic reports States must submit to the Committee (reporting procedure).

114. The Committee shall also be competent to consider individual communications relating to any matter covered by the Charter (individual complaints procedure).

115. In addition, the Committee "may resort to any appropriate method of investigating any matter falling within the ambit of the ... Charter" (art. 45).

IV. CONCLUDING REMARKS

116. The right to education originating in article 26 of the Universal Declaration of Human Rights has been broadly developed in a large number of universal and regional human rights instruments. At the universal level, the provisions on the right to education contained in United Nations declarations or resolutions on racial discrimination, the rights of women, the rights of the child and refugees have been reiterated in legally binding human rights treaties. These conventions are now in force. The right to education of migrant workers and members of their families is contained in a specific convention which is not yet in force though it was adopted in 1990.

117. However, United Nations declarations in relation to certain groups of individuals, such as minorities, indigenous peoples, detainees and disabled persons, have not yet been translated into binding instruments. Provisions regarding some of these groups are contained in other universal treaties, such as the International Covenant on Civil and Political Rights, the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries or the UNESCO Convention against Discrimination in Education. The universal provisions regarding the right to education of detainees and disabled persons contained in United Nations declarations or resolutions have still to be translated into a legally binding instrument. There are no provisions at the universal level regarding the right of internally displaced persons to education. Two of the Geneva Conventions and Protocol I to those Conventions contain some provisions regarding the right to education of prisoners of war and civilian population in time of war.

118. The rights of disabled persons, migrant workers and members of their families, minorities, indigenous peoples, refugees and internally displaced persons are covered to various degrees by regional instruments: the European Social Charter, the European Convention on the Legal Status of Migrant Workers, the OSCE Charter of Paris for a New Europe, OSCE Enhanced Commitments and Co-operation in the Human Dimension (these last two instruments are not legally binding) and the African Charter on the Rights and Welfare of Children (not yet in force).

119. The goals of education contained in the Universal Declaration have been reiterated with some changes in all universal human rights treaties. The Convention on the Rights of the Child expands these aims to cover the development in the child of respect for his or her parents, his or her own cultural identity, language and values, for the national values of the country where he or she lives, the country from which he or she may originate, for other civilizations and for the natural environment. In addition, the African Charter on the Rights and Welfare of the Child includes other aims: to preserve national independence and integrity, promote and achieve African Unity and solidarity, and promote understanding of primary health care.

120. The "core content" of the right to education common to all the universal and regional human rights treaties are the principle of non-discrimination and

the principle that primary education should be available to all free and compulsory. The European Social Charter is the only instrument which reiterates the concept of free secondary education contained in article 13 of the Covenant, without a limiting reference to "progressive introduction". Article 17.2 of the Charter calls for measures to provide "a free primary and secondary education", but without mentioning "compulsory".

121. The machinery established at the universal level to monitor provisions in the treaties regarding the right to education is still far from having attained all its possibilities. The reporting obligation procedure is common to the treaty bodies established under the two Covenants, and the conventions on racial discrimination, on the rights of the child, on discrimination against women and on migrant workers, as well as to the relevant ILO and UNESCO conventions. The inter-State complaints procedure and the individual complaints procedure only apply in the case of the Human Rights Committee, CERD, the committee to be established under the convention on migrant workers, ILO and UNESCO (not for individual petitions). The right to education of indigenous peoples is covered by ILO conventions and article 27 of the Covenant. The latter article covers minorities. But internally displaced persons, detainees and disabled persons are not covered by a legally binding instrument and monitoring mechanisms. The right to education of refugees, though protected under the Convention relating to the Status of Refugees, lacks a monitoring mechanism other than the "good offices" of the Office of the High Commissioner for Refugees, which may obtain information from Governments concerning this particular situation. The same may be said regarding prisoners of war and civilians in time of war, for which the "good offices" of the delegates of ICRC or the International Fact-Finding Commission are the only monitoring mechanism.

122. At the regional level, the inter-State and individual complaints procedures are available to the newly established permanent European Court of Human Rights. The Committee of Experts under the Social Charter monitors compliance through the periodic reports member States submit to it. The mechanisms set up by OSCE, though effective, are of a political nature and not legally binding. The Inter-American Commission may carry out <u>in loco</u> investigations and monitor situations through copies of periodic reports it receives. Both the Inter-American Commission and the Inter-American Court (with some limitations) monitor violations through an individual complaints procedure. In addition the Court adjudicates alleged violations by a State. Allegations regarding violations to the right to education may be considered in the future by these organs when the Protocol of San Salvador enters into force. The African Commission has competence to examine both inter-State and individual complaints, but only in special cases of serious or massive human rights violations. The African Committee on the Rights and Welfare of the Child, when established, will have at its disposal two mechanisms, the reporting obligation procedure and the individual complaints procedure, to monitor the realization of provisions concerning the right to education.

123. This paper has attempted to review the provisions on the right to education contained in legally binding human rights instruments at the universal and regional levels and to describe the machinery established to monitor the implementation of those provisions. The practice and jurisprudence developed by these different mechanisms remain to be studied.

Notes

1/ See Manfred Nowak, "The right to education" in Eide and others, Economic, Social and Cultural Rights M. Nijhoff, 1995.

2/ The cultural dimension of education is reflected in the provisions of article 15 of the Covenant dealing with the participation of the individual in cultural life, enjoyment of the benefits of scientific progress and its application, and freedom of scientific research.

3/ The phenomenon of the "brain drain" of intellectuals from developing countries to developed countries is not taken into account.

4/ In their study of the impact of International Monetary Fund (IMF) stabilization programmes on respect for economic and social rights in Argentina, Conklin and Davidson reported that government expenditures, on health care and education in the 1976-1978 stabilization period were cut by half. See M. Conklin and D. Davidson "The I.M.F. and economic and social rights: a case study of Argentina, 1958-1985", Human Rights Quarterly, vol. 8, No. 2, 1986.

5/ See A.H. Halsey and others Education, Economy and Society, The Free Press of Glencoe, Collier-Macmillan, Toronto, 1965.

6/ See J. Donnelly and R.E. Howard, "Assessing national human rights performance: a theoretical framework", Human Rights Quarterly, vol. 10, No. 2, 1988.

7/ For F. Coomans the use of the term "to recognize" is closely linked to the idea of progressive realization. This author distinguishes three levels in the obligations contracted by States parties under the Covenant, increasing from the "obligation to respect" (the State must refrain from interfering with the exercise of such rights), through the "obligation to protect" (the State must take steps through legislation or other means) to the "obligation to guarantee" (the obligation to carry out a long-term programme). See F. Coomans, "Clarifying the core elements of the right to education", Netherlands Institute of Human Rights, SIM Special, No. 8, 1995.

For Ph. Alston and G. Quinn, the term "to recognize" indicates the application of general State obligations under article 2.1. These authors establish a continuum comprising various levels of State obligations. The term "to respect" connotes obligations of a generally negative character and corresponds to the minimalist undertaking. Next to the minimalist undertaking is the general obligation to achieve progressively the rights "recognized" in the Covenant. When the term "to ensure" is used in the Covenant it implies stronger obligations and that the rights linked to this obligation must be implemented immediately. Finally, at the highest level of the continuum, the term "to guarantee" means that the rights which it refers to are to be implemented at once.

8/ Universally and without discrimination of any kind in accordance with article 2.2 of the Covenant. For F. Coomans, the "right of access to existing public education institutions in a non-discriminatory way" constitutes

one of the key elements of the "core content" of the right to education (ibid.).

9/ For J. Delbrück "the human personality inherent in human dignity forms the basis of all aspects and implications of the right to education and as such has to be taken into account in determining the meaning and scope of the right, especially with regard to the role of the State in the process of implementing the right to education" [The right to education as an international human right], cited in "The realization of economic, social and cultural rights: the realization of the right to education, including education in human rights", E/CN.4/Sub.2/1998/10.

10/ This connotes the idea of individual freedom and that the individual after having been socially educated will perform in a functional and responsible manner. See J. Delbrück, Ibid.

11/ According to the matrix developed by F. Coomans (op. cit), the obligations of the State to implement article 13.2 fall under the social dimension, which contains the elements of availability and accessibility.

12/ This particular provision has raised the question as to the obligation of the State to implement it immediately or progressively in accordance with article 2.1. Limburg principle No. 8 states: "Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately, while other rights can become justiciable over time". Commenting on this particular principle in the same issue of Human Rights Quarterly, vol. 9, No. 2, 1987, E.V.O. Dankwa and C. Flinterman note "under article 13.2 (a) of the Covenant primary education is compulsory and should be made available to all. If this right can be realized immediately, the concept of progressive achievement should not be used to delay its assurance and realization". See also General Comment 3 on article 2.1 of the Committee on Economic, Social and Cultural Rights, which includes article 13.2 (a), 13.3 and 13.4 among those provisions susceptible of immediately implementation (HRI/GEN/1/Rev.1). Of the 13 reservations or declarations made by States parties to articles 13 and 14 only four (Barbados, Madagascar, the United Kingdom - for some of its territories - and Zambia) make reference to the difficulties of implementation (E/CN.12/1993/Rev.3).

13/ Japan has entered a reservation regarding subparagraphs (a) and (b) on the words "and in particular by the progressive introduction of free education". Ibid.

14/ In the working paper on education in human rights submitted to the Sub-Commission (E/CN.4/Sub.2/1998/10), cited above, it is noted that "stressing the freedom dimension might have the effect of jeopardizing acquired equal opportunity rights, of favouring the affluent or cultured classes and of detracting from social cohesion".

15/ Algeria, the Congo and Malta have entered reservations to paragraphs 3 and 4 of article 13. Algeria indicated that those provisions "can in no case impair its right freely to organize its educational system". The Congo stated that the provisions are "inconsistent with the principle of nationalization of education and with the monopoly granted to the State in

that area". Malta, while in favour of upholding the principle of paragraph 3 indicated that "it is difficult in view of financial and human resources" (see E/CN.12/1993/Rev.3).

16/ Guinea has entered a reservation to article 14 stating that its provisions are against the Charter of the United Nations, in general, and against United Nations resolutions regarding the granting of independence to peoples under colonial rule, in particular (Ibid.).

17/ See P. Sieghart, The International Law of Human Rights, Clarendon Press, Oxford, 1984.

18/ For a history of the drafting of article 26, see A. Verdoodt Naissance et Signification de la Déclaration Universelle des Droits de l'Homme, Société d'Etudes Morale, Sociales et Juridiques, Louvain.

19/ While recognizing that the rights contained in article 27 of the Covenant are of an individual character, the Human Rights Committee has acknowledged that, in order for the minority group to maintain its culture, language or religion, States may have to take positive measures (General Comment No. 23 (HRI/GEN/1/Rev.1)). See also the discussion on the Advisory Opinion, Permanent Court of International Justice, 1935, on Minority Schools in Albania, in H.J. Steiner and Ph. Alston International Human Rights in Context, Clarendon Press, Oxford, 1996. Article 5 (c) of the UNESCO Convention against Discrimination in Education underlines "the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language". Articles 26 to 31 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries guarantee the right of the people concerned, inter alia, to establish their own educational institutions and facilities.

20/ The Committee on the Elimination of Racial Discrimination (CERD) is particularly concerned that States parties should implement the preventive provisions of article 7 of the Convention and draws their attention to these provisions. In 1983, one of its members, G. Ténékidés, carried out a study on article 7 (United Nations Publication, Sales No. E.85.XIV.3 (CERD/3)). More recently, a joint study by two members of CERD and two members of the Sub-Commission was submitted to the latter organ in 1998 (E/CN.4/Sub.2/1998/4). The Committee has also adopted General Recommendation V regarding the immediate measures that States parties must take in order to fulfil the aims of that article (see HRI/GEN/1/Rev.1).

21/ General Recommendations No. 5, regarding special temporary measures, and No. 18, regarding disabled women, adopted by the Committee on the Elimination of Discrimination against Women are relevant to the right to education (see HRI/GEN/1/Rev.1).

22/ Articles 13 and 18 refer respectively to freedom of expression and the responsibilities of both parents for the upbringing and development of the child.

23/ The Convention is not yet in force. It will come into force, in accordance with article 87, after the twentieth instrument of ratification or accession has been deposited.

24/ ILO Convention No. 107: Indigenous and Tribal Populations is still in force.

25/ As of September 1998, the Protocol was not yet in force. In accordance with article 2.3, the Protocol shall enter into force upon the deposit by 11 States of their instruments of ratifications or accessions. Ten States had ratified the Protocol at that date.

26/ The Charter has not yet come into force. In accordance with article 47.3, it will enter into force 30 days after the ratification or adherence of 15 member States of the Organization of African Unity. As of October 1998, 10 States had deposited their instruments of ratification.

27/ "Traditionally, any human rights organization or treaty that was solely dependent upon the actions of governments for the implementation and enforcement of human rights norms has been largely doomed to failure", S. Leckie, "The Inter-State Complaint Procedure in international human rights law: hopeful prospects or wishful thinking?", Human Rights Quarterly, vol. 10, No. 2, 1988.

28/ See "Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights" (E/CN.4/1997/105).

29/ Vienna Declaration and Programme of Action (A/CONF.157/23), Part II, para. 40.

30/ This Convention has not yet come into force. Twenty ratifications or accessions are necessary for it to enter into force, in accordance with article 87.

31/ ILO, 86th Session 1998, "Report of the Committee of Experts on the Application of Conventions and Recommendations", Geneva.

32/ N. Valticos, "The International Labour Organisation (ILO), in The International Dimensions of Human Rights, UNESCO, Paris, 1982.

33/ Buergenthal and D. Shelton, Protecting Human Rights in the Americas, N.P. Engel, Strasbourg, 1995.

34/ See T. Buergenthal and D. Shelton, op. cit.; and H. Gros Espiell, "The Organization of American States" in The International Dimensions of Human Rights.

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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Draft general comment No. 9: The domestic application of the Covenant*

A. The duty to give effect to the Covenant in the domestic legal order

1. In its General Comment No. 3 (1990) the Committee addressed issues relating to the nature and scope of States parties' obligations. The present general comment seeks to elaborate further certain elements of the earlier statement. The central obligation in relation to the Covenant is for States parties to give effect to the rights recognized therein. By requiring Governments to do so "by all appropriate means", the Covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account.

* Adopted at the 51st meeting on 1 December 1998 (nineteenth session).

2. But this flexibility coexists with the obligation upon each State party to use all the means at its disposal to give effect to the rights recognized in the Covenant. In this respect, the fundamental requirements of international human rights law must be borne in mind. Thus the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.

3. Questions relating to the domestic application of the Covenant must be considered in the light of two principles of international law. The first, as reflected in article 27 of the Vienna Convention on the Law of Treaties of 1969, is that "[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". In other words, States should modify the domestic legal order as necessary in order to give effect to their treaty obligations. 1/ This issue is considered further by the Committee in its General Comment No. 12 (1998). The second principle is reflected in article 8 of the Universal Declaration of Human Rights, according to which "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The Covenant contains no direct counterpart to article 2.3 (b) of the International Covenant on Civil and Political Rights which obligates States parties to, inter alia, "develop the possibilities of judicial remedy". Nevertheless, a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not "appropriate means" within the terms of article 2.1 of the Covenant or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other "means" used could be rendered ineffective if they are not reinforced or complemented by judicial remedies.

B. The status of the Covenant in the domestic legal order

4. In general, legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals. The rule requiring the exhaustion of domestic remedies reinforces the primacy of national remedies in this respect. The existence and further development of international procedures for the pursuit of individual claims is important, but such procedures are ultimately only supplementary to effective national remedies.

5. The Covenant does not stipulate the specific means by which it is to be implemented in the national legal order. And there is no provision obligating its comprehensive incorporation or requiring it to be accorded any specific type of status in national law. Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party. The means chosen are also subject to review as part of the Committee's examination of the State party's compliance with its obligations under the Covenant.

6. An analysis of State practice with respect to the Covenant shows that States have used a variety of approaches. Some States have failed to do anything specific at all. Of those that have taken measures, some States have transformed the Covenant into domestic law by supplementing or amending existing legislation, without invoking the specific terms of the Covenant. Others have adopted or incorporated it into domestic law, so that its terms are retained intact and given formal validity in the national legal order. This has often been done by means of constitutional provisions according priority to the provisions of international human rights treaties over any inconsistent domestic laws. The approach of States to the Covenant depends significantly upon the approach adopted to treaties in general in the domestic legal order.

7. But whatever the preferred methodology, several principles follow from the duty to give effect to the Covenant and must therefore be respected. First, the means of implementation chosen must be adequate to ensure fulfilment of the obligations under the Covenant. The need to ensure justiciability (see para. 10 below) is relevant when determining the best way to give domestic legal effect to the Covenant rights. Second, account should be taken of the means which have proved to be most effective in the country concerned in ensuring the protection of other human rights. Where the means used to give effect to the Covenant on Economic, Social and Cultural Rights differ significantly from those used in relation to other human rights treaties, there should be a compelling justification for this, taking account of the fact that the formulations used in the Covenant are, to a considerable extent, comparable to those used in treaties dealing with civil and political rights.

8. Third, while the Covenant does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable. Direct incorporation avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the Covenant rights by individuals in national courts. For these reasons, the Committee strongly encourages formal adoption or incorporation of the Covenant in national law.

C. The role of legal remedies

Legal or judicial remedies?

9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. By the same token, there are some obligations, such as (but by no means limited to) those concerning non-discrimination, 2/ in relation to which the provision of some form of judicial remedy would seem indispensable

in order to satisfy the requirements of the Covenant. In other words, whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary.

Justiciability

10. In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions. The Committee has already made clear that it considers many of the provisions in the Covenant to be capable of immediate implementation. Thus, in General Comment No. 3 it cited, by way of example, articles 3, 7 (a) (i), 8, 10.3, 13.2 (a), 13.3, 13.4 and 15.3. It is important in this regard to distinguish between justiciability (which refers to those matters which are appropriately resolved by the courts) and norms which are self-executing (capable of being applied by courts without further elaboration). While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.

Self-executing

11. The Covenant does not negate the possibility that the rights it contains may be considered self-executing in systems where that option is provided for. Indeed, when it was being drafted, attempts to include a specific provision in the Covenant to the effect that it be considered "non-self-executing" were strongly rejected. In most States, the determination of whether or not a treaty provision is self-executing will be a matter for the courts, not the executive or the legislature. In order to perform that function effectively, the relevant courts and tribunals must be made aware of the nature and implications of the Covenant and of the important role of judicial remedies in its implementation. Thus, for example, when Governments are involved in court proceedings, they should promote interpretations of domestic laws which give effect to their Covenant obligations. Similarly, judicial training should take full account of the justiciability of the Covenant. It is especially important to avoid any *a priori* assumption that the norms should be considered to be non-self-executing. In fact, many of them are stated in terms which are at least as clear and specific as those in other human rights treaties, the provisions of which are regularly deemed by courts to be self-executing.

D. The treatment of the Covenant in domestic courts

12. In the Committee's guidelines for States' reports, States are requested to provide information as to whether the provisions of the Covenant "can be invoked before, and directly enforced by, the Courts, other tribunals or administrative authorities". 3/ Some States have provided such information, but greater importance should be attached to this element in future reports. In particular, the Committee requests that States parties provide details of any significant jurisprudence from their domestic courts that makes use of the provisions of the Covenant.

13. On the basis of available information, it is clear that State practice is mixed. The Committee notes that some courts have applied the provisions of the Covenant either directly or as interpretive standards. Other courts are willing to acknowledge, in principle, the relevance of the Covenant for interpreting domestic law, but in practice, the impact of the Covenant on the reasoning or outcome of cases is very limited. Still other courts have refused to give any degree of legal effect to the Covenant in cases in which individuals have sought to rely on it. There remains extensive scope for the courts in most countries to place greater reliance upon the Covenant.

14. Within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.

15. It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations. Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.

Notes

1/ A/CONF.39/27.

2/ Pursuant to article 2.2 States "undertake to guarantee" that the rights in the Covenant are exercised "without discrimination of any kind".

3/ Reporting guidelines, E/C.12/1990/8, Annex IV.

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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Draft general comment No. 10:

The role of national human rights institutions in the protection of economic, social and cultural rights*

* Adopted at the 51st meeting (nineteenth session), on 1 December 1998.

GE.98-14841 (E)

1. Article 2 (1) of the Covenant obligates each State party "to take steps ... with a view to achieving progressively the full realization of the [Covenant] rights ... by all appropriate means". The Committee notes that one such means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights. In recent years there has been a proliferation of these institutions and the trend has been strongly encouraged by the General Assembly and the Commission on Human Rights. The Office of the High Commissioner for Human Rights has established a major programme to assist and encourage States in relation to national institutions.

2. These institutions range from national human rights commissions through Ombudsman offices, public interest or other human rights "advocates", to defenseurs du peuple and defensores del pueblo. In many cases, the institution has been established by the Government, enjoys an important degree of autonomy from the executive and the legislature, takes full account of international human rights standards which are applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights. Such institutions have been established in States with widely differing legal cultures and regardless of their economic situation.

3. The Committee notes that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions. The following list is indicative of the types of activities that can be, and in some instances already have been, undertaken by national institutions in relation to these rights:

(a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;

(b) The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;

(c) Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;

(d) The identification of national-level benchmarks against which the realization of Covenant obligations can be measured;

(e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the State as a whole or in areas or in relation to communities of particular vulnerability;

(f) Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society; and

(g) Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.

4. The Committee calls upon States parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requests States parties to include details of both the mandates and the principal relevant activities of such institutions in their reports submitted to the Committee.